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IN THE UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF CALIFORNIA

EMMA C., et al.,

Plaintiffs,

v.

THURMOND, et al.,

Defendants.

3:96-cv-04179-VC

**STIPULATION AND ~~PROPOSED~~  
 ORDER REGARDING STATE'S  
 COMPLIANCE AT PHASE 1 - IEP  
 IMPLEMENTATION DATA  
 COLLECTION**

Judge: The Honorable Vince Chhabria

1 Pursuant to the Court's instructions at the June 2, 2021 Evidentiary Hearing regarding IEP  
2 Implementation Data Collection (Dkt. 2637), the Parties, Plaintiffs Emma C. et al. and  
3 Defendants California Department of Education, Tony Thurmond, in his official capacity as the  
4 State Superintendent of Public Instruction, and State Board of Education (collectively, State  
5 Defendants or the State) hereby stipulate as follows:

6 WHEREAS, on August 17, 2018, the Court issued an order (Dkt. 2428) in which it  
7 determined that the State was largely in compliance with its obligation to collect the statewide  
8 data it needs to fulfill its monitoring and enforcement responsibilities under the federal  
9 Individuals with Disabilities Education Act and the First Amended Consent Decree (FACD), but  
10 that the State was out of compliance with federal law and the FACD with respect to data  
11 collection to help the State identify school districts that are not providing the services promised in  
12 individual education programs (IEPs);

13 WHEREAS, on March 12, 2021, State Defendants submitted their IEP Implementation  
14 Data Collection and Sampling Methodology Submission (March 12, 2021 IEP Implementation  
15 Data Collection Submission) (Dkt. 2627);

16 WHEREAS, on April 9, 2021, the Monitor submitted his Review of the State's March 12,  
17 2021 IEP Implementation Data Collection Submission (Dkt. 2630);

18 WHEREAS, on April 23, 2021, State Defendants submitted their Response to the Monitor's  
19 Review of the State's March 12, 2021 IEP Implementation Data Collection Submission (April 23,  
20 2021 IEP Implementation Data Collection Submission) (Dkt. 2632);

21 WHEREAS, on May 14, 2021; Plaintiffs submitted their Response to State Defendants'  
22 March 12, 2021 and April 23, 2021 IEP Implementation Data Collection Submissions and the  
23 Monitor's Review of the March 12, 2021 IEP Implementation Data Collection Submission (Dkt.  
24 2635);

25 WHEREAS, on June 2, 2021, the Court conducted an Evidentiary Hearing on the State's  
26 compliance with its obligations under the FACD and with federal law regarding statewide data  
27 collection on IEP Implementation (Dkt. 2637);

28

1 WHEREAS, at the conclusion of the June 2, 2021 Evidentiary Hearing, the Court found  
2 that the State was in compliance with its obligations under federal law and the FACD with respect  
3 to statewide data collection to help the State identify school districts that are not providing the  
4 services promised in IEPs, and had adequately addressed the deficiencies identified in the August  
5 17, 2018 Order (Dkt. 2428) with respect to the same, in light of: (1) the State's March 12, 2021  
6 and April 23, 2021 Submissions on IEP Implementation (Dkts. 2627 & 2632), and (2) the State's  
7 policymakers' testimony at the June 2, 2021 hearing in which they represented that the State will  
8 undertake the following actions to meet its obligations under federal law and the FACD:

9 (A) For purposes of determining the percentage rate the State will use to measure an  
10 local education agency's (LEA's) implementation of IEP services as part of the State's annual  
11 statewide data collection, as part of its proposed pilot collection (as set forth in Dkts. 2627 and  
12 2632), the State will collect data from LEAs at the following percentage rate ranges: 100 to 95%  
13 of IEP services implemented, 94.9 to 90% of IEP services implemented; and less than 90% of IEP  
14 services implemented;

15 (B) As part of its annual statewide data collection regarding an LEA's implementation of  
16 IEP services, the State will require that each Superintendent of each LEA certify to the State that  
17 the data submitted regarding an LEA's implementation of IEP services are accurate and that  
18 school principals have certified to the LEA's Superintendent that such submitted data are  
19 accurate; and

20 (C) To assess the validity and reliability of data submitted in response to the State's  
21 annual statewide data collection regarding an LEA's implementation of IEP services, for those  
22 LEAs who submit such data, the State will randomly select 10% of those LEAs and audit the data  
23 submitted by those LEAs regarding the LEA's implementation of IEP services.

24 NOW THEREFORE, the Parties hereby submit this stipulation and respectfully request that  
25 the Court enter an order finding that the State is in compliance with its obligations under federal  
26 law and the FACD with respect to statewide data collection to help the State identify school  
27 districts that are not providing the services promised in IEPs, and that the State has adequately  
28 addressed the deficiency identified in the August 17, 2018 Order (Dkt. 2428) with respect to the

same, in light of (1) the State's March 12, 2021 and April 23, 2021 Submissions on IEP Implementation (Dkts. 2627 & 2632) and (2) the State's policymakers' testimony at the June 2, 2021 hearing.

Dated: June 14, 2021

Respectfully submitted,  
ROB BONTA  
Attorney General of California  
DARRELL W. SPENCE  
Supervising Deputy Attorney General

/s/ Kirin K. Gill  
KIRIN K. GILL  
Deputy Attorney General

*Attorneys for Defendants  
California Department of Education, Tony  
Thurmond, in his official capacity as the  
State Superintendent of Public Instruction,  
and State Board of Education*

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STANFORD LAW SCHOOL  
By: /s/  
William S. Koski

NATIONAL CENTER FOR YOUTH LAW  
By: /s/  
Leecia Welch  
Freya Pitts

*Attorneys for Plaintiffs Emma C., et al.*

Pursuant to Local Rule 5-1(i)(3) regarding signatures, I, Kirin K. Gill, attest that concurrence in the filing of this document has been obtained from each of the other signatories. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 14th day of June, 2021, at Sacramento, California.

/s/ Kirin K. Gill  
Kirin K. Gill

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**[PROPOSED] ORDER**

Pursuant to the terms of the Stipulation And [Proposed] Order Regarding the State's Compliance at Phase 1 – IEP Implementation Data Collection, the Court finds that the State is in compliance with its obligations under the federal Individuals with Disabilities Education Act and the First Amended Consent Decree with respect to statewide data collection to help the State identify school districts that are not implementing the services promised in individual education programs (IEPs), and has adequately addressed the deficiencies identified in the August 17, 2018 Order (Dkt. 2428) with respect to the same, in light of: (1) the State's March 12, 2021 and April 23, 2021 Submissions on IEP Implementation (Dkts. 2627 & 2632), and (2) the State's policymakers' testimony at the June 2, 2021 hearing in which they represented that the State will undertake the following actions to meet its obligations under federal law and the FACD:


(A) For purposes of determining the percentage rate the State will use to measure an local education agency's (LEA's) implementation of IEP services as part of the State's annual statewide data collection, as part of its proposed pilot collection (as set forth in Dkts. 2627 and 2632), the State will collect data from LEAs at the following percentage rate ranges: 100 to 95% of IEP services implemented, 94.9 to 90% of IEP services implemented; and less than 90% of IEP services implemented;

(B) As part of its annual statewide data collection regarding an LEA's implementation of IEP services, the State will require that each Superintendent of each LEA certify to the State that the data submitted regarding an LEA's implementation of IEP services are accurate and that school principals have certified to the LEA's Superintendent that such submitted data are accurate; and

(C) To further assess the validity and reliability of data submitted in response to the State's annual statewide data collection regarding an LEA's implementation of IEP services, for those LEAs who submit such data, the State will randomly select 10% of those LEAs and audit the data submitted by those LEAs regarding the LEA's implementation of IEP services.

**IT IS SO ORDERED.**

1 Dated: June 18, 2021

  
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VINCE CHHABRIA  
UNITED STATES DISTRICT COURT JUDGE

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### CERTIFICATE OF SERVICE

Case Name: **Emma C., et al. v. Thurmond,**  
**et al.**

No. **3:96-cv-04179-VC**

I hereby certify that on June 14, 2021, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

**STIPULATION AND [PROPOSED] ORDER REGARDING STATE'S COMPLIANCE  
AT PHASE 1 - IEP IMPLEMENTATION DATA COLLECTION**

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on June 14, 2021, at Sacramento, California.

Natalie Y. Quinonez

Declarant

*/s/ Natalie Y. Quinonez*

Signature

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